IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.582 OF 1996

Sidram Shivlingappa Jirge, .. Petitioner

Vs

Purshottam Vasudeo Somshetty, .. Respondent

Mr A.M.Kulkarni, for the petitioner.

Mr G.R.Agarwal, for respondent no.1.

CORAM : D.B.BHOSALE,J.

DATE : 30.11.2005.

PC:

1. Heard the learned counsel for the parties.

2. This petition impugns the order dated 17.8.1995 passed below Exhibit-12 in Special Darkhast No.80/90 by which the executing Court held that the respondent-decree holder is entitled to recover the decreetal amount and issued warrant under Order 21 rule 66 of the Code of Civil Procedure with proclamation as per the order below Exhibit-1 passed on 5.2.1992. That order was, however, stayed by this Court while admitting the writ petition.

3. The respondent-decree holder had filed Special

Civil Suit No.39/1980 against the petitioner seeking recovery of the amount of Rs.25,406.24 paise. The suit was compromised by the parties and the decree in terms of the Consent Terms was passed on 7.7.1989. Under the Consent Terms, the petitioner had agreed to pay Rs.6000/- on the date of filing of the Consent Terms and Rs.825/- per month until the total amount of Rs.14,000/- is paid to the respondent-decree holder. The first instalment of Rs.825/- was paid on 10.1.1989. The Consent Terms also provides that in case of a single default, the respondent was entitled to execute the decree against the petitioner. According to the respondent-decree holder, the instalments were not paid on 10th of every month as agreed in the Consent Terms. I perused the Consent Terms. In my opinion, the Consent Terms do not show that the petitioner had agreed to pay the instalment of Rs.825/- on or before 10th of every month. What was agreed was to pay Rs.825/- per month. The schedule annexed to the writ petition at Exhibit-12 clearly shows that all instalments were paid in each month after August,1989 till the amount of Rs.14,000/- was made over to the respondent. It is very pertinent to note that all the instalments were accepted by the respondent till June,1990 without making any grievance and thereafter remaining instalments were deposited by

the petitioner in the Court and the respondent had withdrawn the said amount deposited by him in the Court. Keeping this in view and considering the terms of the compromise, in my opinion, the learned Judge erred in holding that all the instalments were not paid on or before 10th of every month and that there was delay in making payment of the instalments as agreed in the Consent Terms. In the result, this petition is allowed. The order impugned is set aside. No costs.

. It is open for the respondent to withdraw the amount deposited in the Court, if not withdrawn already.

(D.B.Bhosale,J.)